IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/01/2003

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN

S.A.NO.211 OF 1997

1.K.Venugopal (died)
2.S.V.Umarani
3.Chinnakka
4.V.Saran
5.V.Suraj (minor) ..Appellants
(Appellants 2 to 5 brought on record
as LR of the deceased sole appellant
vide order dated 11.10.2002 in C.M.P
No.13742/2002)

-Vs-

1.The Commissioner & Secy. To Govt.
of Tamil Nadu, Social Welfare Dept.
Fort St. George, Chennai 9

2.The District Collector
Periyar District, Erode

3.The Revenue Divisional Officer
Gobichettipalayam

4.The Special Officer
State Bank of India
Sankar Building, No.7A
Westveli Street, Madurai ..Respondents

Prayer: Second appeal against the judgment and decree dated 14.06.19
96 made in A.S.No.8/1995 on the file of the Sub-Court, Bhavani.

!For Appellants : Mr.N.Kannadasan

^For Respondents : Mr.M.C.Swamy, Spl.G.P.

:JUDGMENT

The second appeal was admitted on the following substantial questions
of law:

(a) Whether the lower appellate court is correct in applying the

observation made by the Supreme Court of India in Civil Appeal No.4725/9 5 which is relating to the grant of interim order for the continuance of service of an employee in a matter wherein an individual has approached for the alteration of date of birth on the verge of his retirement?

(b) Whether the lower appellate court is correct in holding that the appellant cannot invoke the jurisdiction of the civil court and he is bound to convince the third respondent only in deciding his community status in spite of the fact that the revenue authorities have failed to consider various documentary evidence adduced on an earlier occasion?

(c) Whether the lower appellate court is correct in summarily rejecting all the documentary evidence by observing that they are related to different persons, even though, number of documents actually belonging to the brothers, father and uncle of the appellant herein?

(d) Whether the lower appellate court is correct in reversing the judgment of the trial court without looking into appreciating several judgments delivered by this court on the issue in question in identical cases?

2. The sole appellant died pending second appeal. Therefore his legal representatives have been brought on record. The deceased sole appellant was the only plaintiff in the suit. The respondents are the defendants in the suit. Therefore for convenience sake in this judgment the parties to the suit would be referred to as the plaintiff and defendants. The plaintiff filed the suit in O.S.No.270/1987 before the District Munsif, Bhavani for a declaration that he belongs to Konda Reddy Community coming under the list of Scheduled Tribe in the Constitution and for an injunction restraining defendants 1 to 4 from verifying, challenging and cancelling the community certificate issued by the head quarters Deputy Tahsildar and for other reliefs. Defendants 1 to 3 filed a common written statement and D4 filed a separate written statement. The plaintiff examined, in support of his case, two witnesses as P.Ws.1 and 2, including himself as P.W.1 and marked as many as 34 exhibits as Exs.A1 to A34. On behalf of defendants 1 to 3, two witnesses were examined as D.Ws.1 and 2 and one exhibit was marked as Ex.B1. The learned trial Judge on merits decreed the suit as prayed for. On appeal by defendants 1 to 3 in the suit, the learned appellate Judge allowed the appeal thereby setting aside the decree of the trial court. That is how the plaintiff is before this court in the second appeal, which was admitted, as already stated, on the questions of law referred to earlier. Heard Mr.N.Kannadasan learned counsel appearing for the plaintiff and Mr.M.C.Swamy learned Special Government Pleader appearing for defendants 1 to 3.

3. Inasmuch as the judgment of the lower appellate court is a reversing judgment, I am inclined to give the minimum facts, as borne out by the pleadings, to appreciate the controversy. The case of the plaintiff in short is as follows:

"The plaintiff belongs to Konda Reddy Community, which is classified as one of the tribal community under the Constitution of India; his ancestors also belonged to the same community; they were originally from Andhra Pradesh,

who then migrated into the territories of Tamil Nadu; their mother tongue is Telugu; the plaintiff was born in Illipili Village in Guruva Reddiyur on 07.05.1962; he did his preuniversity in the Government college at Ooty and joined the service of D4 on 24 .07.1983; the other residents of Illipili Village recognised the plaintiff and his family members as belonging to Konda Reddy Community; the school certificate of the plaintiff shows his community as Konda Reddy Community; when D4 wanted the plaintiff to produce a community certificate, he approached D3; D3 without holding a proper enquiry, rejected the request; the petitioner challenged that before the High Court in W.P.No.2211/1983; W.P.No.2211/1983 was allowed finding that there is non-application of mind on the part of D3 and thus the said order was set aside; however D4's right to verify the certificate in question by addressing the appropriate authority was left open; D3 had again cancelled the certificate on certain grounds and the enquiry was bad in law."

The statement of D2, which was adopted by D1 and D3, is on the following lines:

"The case of the plaintiff is denied; D3 cancelled the community certificate for several reasons; Kesavan, brother of the plaintiff had also obtained a similar community certificate and he had entered the service of the Reserve Bank of India; that certificate was also found to be not correct and consequently through the Government the Reserve Bank of India had been informed and it had initiated action against him; the plaintiff does not belong to Konda Reddy Community and he belongs to Peria Kombu Reddy, which is a sub-caste among Reddiars; there was no Konda Reddy Community in Bhavani Taluk during the census held in the year 1961; the suit is not maintainable in law and is liable to be dismissed; declaration of social status of a citizen as to whether he belongs to a particular community or not is an exclusive function of the Revenue Authorities; the appropriate Revenue Authority had

gone into the issue and decided it against the plaintiff and the declaration as prayed for cannot be granted by the civil court as the same vests with the Revenue Authorities."

D4 filed a separate written statement contending in substance as follows:

"The suit is not maintainable since the issue lies within the exclusive jurisdiction of the Revenue Authorities and the order of D3 rejecting the request for a community certificate is valid."

The learned trial Judge on going through the materials found as follows:

"Exs.A3, A4 and A8 indicate that the plaintiff belongs to Konda Reddy Community; Ex.A.5 is the school leaving certificate relating to the plaintiff's brother Ravichandran, which also shows that he belongs to Konda Reddy Community; Ex.A6 is the community certificate relating to Kesavan (Plaintiff's brother); this certificate was issued by the Tahsildar, Bhavani; Ex.A9 is the community certificate for Ravichandran referred to above issued by the Tahsildar, Bhavani and it also shows that he also belongs to Konda

Reddy Community; therefore Exs.A3 to A6, A8 and A9 establish the community of the plaintiff and his brothers as Konda Reddy Community; Ex.A11 (of the year 1981) is the income certificate of the plaintiff's father given by the Revenue Inspector and it reveals the community of the plaintiff's father as Konda Reddy; Ex.A10 is likewise the income certificate of Kesavan referred to above given by the Tahsildar, Bhavani and it shows that he belongs to Konda Reddy Community; Ramalingam is the sister's husband of the plaintiff; Ex.A7 is his community certificate and it shows that he belongs to Konda Reddy Community; Ex.A12 is the income certificate of the plaintiff himself issued by the Tahsildar, Bhavani attested by the Village Administrative Officer and it also shows that the plaintiff belongs to Konda Reddy Community."

"Ex.A17 is the mortgage deed dated 23.06.1957; the mortgager is described as Kondappa Reddy (the plaintiff had given evidence that since the mortgager belongs to Konda Reddy, he came to be known as Kondappa Reddy); Ex.A18 is the sale deed dated 26.03.1966; the vendor is one Ramalingam, son of Venkata Reddiar belonging to the same caste namely, Konda Reddy (P.W.1 had given evidence that the vendor is his senior paternal uncle); Ex.A19 is the sale deed dated 16.06.1966 executed by one Ramasamy Reddiar in favour of one Thambianna Reddiar, son of Konda Reddiar (the plaintiff had deposed that Ramasamy Reddiar mentioned in this document is his junior paternal uncle); Ex.A20 is the sale deed dated 17.10.1975 executed by Ramu Reddy, son of Guruva Reddy belonging to Konda Reddy Community (P.W.1 had deposed that Ramu Reddy is his junior paternal uncle); Ex.A21 is the sale deed dated 18.11.1976 ; the vendor is Kuppammal, wife of Kondappa Reddiar belonging to Konda Reddy Community (the plaintiff had given evidence that Kondappa Reddiar is his maternal uncle); Ex.A22 is the sale deed dated 09.06.1976 and the buyer is one Thiagarajan, son of Ramasamy Reddy belonging to Konda Reddy Community and the vendor is one Perumal Reddy, son of Lakshmi Reddy belonging to Konda Reddy Community; Ex.A23 is the sale deed dated 13.02.1958; the settlor is Chinnammal, wife of Krishna Reddiar and the settlee is Venkatarama Reddiar, son of Rangasamy Reddiar residing at Konda Reddy Garden (the plaintiff had deposed that Venkatarama Reddiar is his junior paternal uncle) (it may be noticed here that all the instruments referred to above are registered instruments); Ex.A24 is the agreement between the plaintiff's father and a sugar mill regarding supply of sugarcane and it shows that the plaintiff's father is the resident of Konda Reddy Garden in Illipili Gramam."

3. The application of mind and appreciation of documents namely, Exs.A17 to A26 by the learned trial Judge are as hereunder:

"In all these documents, the earliest being of the year 1957, the parties to the documents are described as persons belonging to Konda Reddy Community and in some documents the area is described as Konda Reddy Garden and the names of the parties to the documents are also known as Konda Reddy; therefore unless Konda Reddy Community existed during the relevant time, there is no scope for such reference; the school records of the plaintiff namely Ex.A3, the first page of S.S.L.C Book and Ex.A4 (transfer certificate issued by the school) establish his community as Konda Reddy; Ex.A16 is the order dated 16.06.1996 in W.P.No.8402/1985; one Malliga was the petitioner therein (P.W.1 had given evidence that the said Malliga is his elder brother's wife);

the prayer in the writ petition was to issue a mandamus to respondents 1 and 2 (Reserve Bank of India, Chennai) to confirm her service on the basis of the report sent by R3 holding that she belongs to Konda Reddy community and consequentially to forbear the respondents above mentioned from proceeding in the matter of verification of community certificate anylonger; the court accepted the case and made the Rule Nisi absolute; Ex.A26 is the order dated 25.07.1984 of a Division Bench of this court in Writ Appeal Nos.7383/1982 and 344/1983; in the first writ appeal Tamil Nadu Konda Reddiars' Welfare Association, Namakkal was the appellant; the issue before the Division Bench of this court was the validity of G.O.Ms.No.1139 dated 23.03.1982 under which Government notified that the Revenue Divisional Officer alone would thereafter be the competent authority instead of Tahsildar, to issue community certificates for the above referred to community and the following criteria were also laid as proof of belonging to the said community

(a) production of sale deeds, other documents, where evidence is available that he/she belongs to Konda Reddy Community; and

(b) relatives of those who have produced the evidence mentioned in items (a) above.

The Division Bench upheld the validity of the said Government Order.
4. On appreciating the above materials, the learned trial Judge categorically found that the plaintiff, by producing documents relating to him as well as relating to his relatives, had established that he belongs to Konda Reddy Community. On perusing Ex.A27, which is a letter dated 12.09.1976 sent by the District Harijan Welfare Officer, Coimbatore to the Director of Harijan and Tribal Welfare Chennai, the learned trial Judge found that the settlement register of the year 1879 discloses the existence of this particular community in the villages mentioned therein and on that the learned trial Judge found that people belonging to Konda Reddy community were living in and around Bhavani, where the plaintiff was residing. The learned Judge also took into account Ex.A33 dated 30.06.1978 (proved and exhibited through D.W.2), which is a letter written by the Revenue Divisional Officer, Gobichettipalayam to the District Collector, Coimbatore. This letter refers to the settlement register of the year 1879 and later documents, which show the existence of Konda Reddy Community in the area concerned and suggested the addressee that the said community may be included as hill tribe. Ex.A28 is the census for the year 1981 and it shows that in Illipili Village there was a strength of 1194 Scheduled Caste and 585 Scheduled Tribe out of the total population of 9514. Besides P.W.1 (plaintiff himself), P.W.2, aged about 75 years on the date of his giving evidence, was examined by the plaintiff. His evidence shows that from the year 1940 to 1980, he was the Village Karnam of Illipili Village and that during his time there were many people belonging to Konda Reddy Community living in his jurisdiction. He would also state that the plaintiff and his family belonged to that community. He would further state that for two generations his family was living there and that from time immemorial people belonging to Konda Reddy Community were living in that village. As against the above documentary and oral evidence, the defendant examined D.Ws.1 and 2. D.W.1 was aged about 35 years on the date of his giving evidence and he would admit that he was the Village Admi nistrative Officer from 19 89 in Illipili

Village. Though he would state in his evidence in chief that the plaintiff's father belongs to Reddiar Community, yet he would admit in his cross examination as follows:

"Only from 1989, I am working in this village; prior to that I do not know the community of the various people, who were living in the village; I do not know that people belonging to Konda Reddy Community were living in Illipili village from time immemorial; however there are places called Konda Reddy Field and Konda Reddy Garden; I do not know whether the owners of those areas belong to Konda Reddy Community."

D.W.2 had been examined to prove Ex.B1 and his evidence is on the basis of Ex.B1, the report prepared and submitted by the Revenue Divisional Officer by name Subbiah. He would state that Ex.B1 shows that there are no people belonging to Konda Reddy Community. However in his evidence in cross, he had admitted as follows:

"The plaintiff was not examined personally as to whether he belongs to Konda Reddy Community or not; till he gave evidence, no such enquiry in particular reference to the plaintiff was conducted; the plaintiff belongs to Hindu Reddiar Community; but however no enquiry was made in that regard."

Having regard to the above materials, the learned trial Judge came to a categorical conclusion that the plaintiff had established that he belongs to Konda Reddy Community. The earlier conclusion arrived at by the authorities had been found to be faulty by a Division Bench of this court by order dated 13.09.1984 in W.P.No.2211/1983 and left the issue open enabling D4 (R5 & R6 in that writ petition) to take any action as they deem fit. The learned trial Judge accepted the case of the plaintiff that the enquiry commenced on the issue of Ex.A1 came to be completed even before the plaintiff could participate in it. The learned trial Judge also found that the Revenue Authorities except relying upon the oral evidence of D.Ws.1 and 2 and Ex.B1 have not placed any acceptable material to sustain their case that Konda Reddy Community people are not in existence in the area concerned. The trial court relying upon Ex.A29 held that the suit is maintainable.

5. I am fully aware that this court is hearing only a second appeal. The judgment of the appellate court is a reversing judgment. The argument advanced by the learned counsel for the decree holder is that the appellate court has summarily rejected the documents relied upon by the learned trial Judge. The reasons given by the learned trial Judge are not that erroneous to be reversed by the appellate court, though it may have the power. The further argument is that the appellate court cannot reverse the well considered conclusion and finding of the trial court only for the purpose of reversing it. That is why I have quoted in extenso the details of the documents and the oral evidence placed by the parties before the lower court; the appreciation and finding rendered thereon by the learned trial Judge so as to carefully scrutinise the points raised in this second appeal. Let me now state hereunder as to how the appellate court appreciated the controversy and came to it's conclusion and whether it is right or not:

(a) (i) Ex.A6 is given by the Medical Officer and not by the Revenue Authorities and therefore it cannot be relied upon.

(ii) Ex.A7 is the community certificate of one Ramalingam.

(iii) Ex.A8 is the community certificate relating to one Venugopal wherein it is mentioned that he belongs to Konda Reddy Community/ Hill Tribe.

(iv) Ex.A9 is the community certificate relating to one Ravichandran.

(v) Ex.A10 is the community certificate relating to one Kesavan.

(vi) Ex.A11 is the community certificate relating to one G.S. Krishnan.

These certificates relate to third parties and therefore they cannot be the basis for deciding the community status of the plaintiff.

This conclusion is definitely wrong and opposed to evidence. Ex.A6 is the copy of the community certificate issued in June 1975 by the Tahsildar, Bhavani in favour of one Kesavan, son of G.S.Krishnan authenticated as a true copy by the Medical Officer. Therefore the rejection of this document on the ground stated by the appellate Judge cannot be sustained. P.W.1 had given evidence that Kesavan mentioned in Ex.A6 is his elder brother. There is no cross examination at all on this. P.W.1 had given evidence, as already noted, that Ramalingam (Ex.A7) is his sister's husband. Ex.A8 is for the plaintiff himself. Ex.A9 (Ravichandran) relates to his brother and Ex.A10 is the income certificate given to his brother, which discloses his community as Konda Reddy Community. Ex.A11 is again a community certificate dated 20.1 1.1981 issued by the Revenue Inspector, Ammapet attested by Assistant Director, Government of India, Tourist Office, Chennai relating to G.S.Krishnan (father of plaintiff) as belonging to Konda Reddy Community. Therefore the rejection of Exs.A6 to A11 is only in a casual and summary manner without application of mind and ignoring the evidence of P.W.1 that they relate to his kith and kin.

(b) Ex.A12 is dated 18.12.1982 issued by the Village Administrative Officer, Vellitirupur attested by the Head Quarters Deputy Tahsildar, Bhavani and it is in the prescribed form of income certificate relating to Venugopal/plaintiff.

This shows the community of the plaintiff as Konda Reddy. This document, as already stated, is the copy of the original attested by the Assistant Director, Government of India, Tourist Office, Chennai.

This has been rejected by the lower appellate court on the ground that it is the certificate issued by the college. It may be true that this certificate in the prescribed form was furnished to the college namely, G.T.N.Arts College, Dindigul and it shows that the plaintiff was at that time studying in the third year B.A course in that college. But however the fact remains that the author of the said certificate is only the Revenue Officials as referred to above.

The learned appellate Judge proceeded to state further as hereunder:

"Sale deeds and school certificates standing in the name of the plaintiff's relatives and the certificate given by the Tahsildar to strangers cannot form the basis for concluding that the plaintiff belongs to Konda Reddy Community. Therefore the sale deeds, mortgage deeds, settlement deeds and school certificates had to be rejected and the plaintiff has to prove his community only before the Revenue Divisional Officer."

This appears to be a wholesale rejection of all the documents without even appreciating the contents therein. P.W.1 proved that to Ex.A17 his maternal uncle is a party; to Ex.A18 his senior paternal uncle is a party; to Ex.A20 his junior paternal uncle is a party. Kondappa Reddy, husband of Kuppaiammal vendor under Ex.A21, is proved by him as his maternal uncle. The settlee under Ex.A23 is one Venkatarama Reddy and he is proved to be his junior paternal uncle. In Ex.A17 the vendor is called as Kondappa Reddy and the evidence is that, because Konda Reddy Community is in existence, persons were called in that name. In Ex.a18 the vendor's community is shown as Konda Reddy Community. In Ex.A19 the grandfather's name of the vendor therein is shown as Konda Reddy. In Ex.A20 the vendor's community is shown as Konda Reddy Community. In Ex.A21 also the community of the vendor is shown as Konda Reddy. In Ex.A22 the community of the purchaser is shown as Konda Reddy. In Ex.A23 the vendor was shown to be residing in the farm house in the Konda Reddy Garden (there is evidence to show that because Konda Reddy Community was in existence, the places in their occupation were also called in their community name. Ex.A17 is of the year 1957. Ex.A18 is of the year 1966. Ex.A19 is of the year 1966. Ex.A20 is of the year 1975. Ex.A21 is of the year 1976. Ex.A22 is of the year 1976 and Ex.A23 is of the year 1958. Ex.A17 is the original registered instrument itself while the rest are only registration copies. The relevant material that can be taken as proof of a person belonging to Konda Reddy community had been laid down by the Government in G.O.Ms.No.1139 dated 23.03.1982 and I have extracted the same earlier in this judgment. When that Government Order was in challenge on many grounds, a Division Bench of this court upheld the validity of the said Government Order. Exs.A17 to A23 are therefore relevant pieces of evidence, which the learned appellate Judge had discarded in a very casual manner. It may be worth noticing here that Ex.A16 is the judgment dated 16.06.1996 in W.P.No.8402/1985 passed by this court and one Malliga is the writ petitioner therein. P.W.1's evidence is that Malliga is his sister-in-law. This court in that judgment accepted Malliga's community certificate issued by the Revenue Authorities as belonging to Konda Reddy Community and issued a mandamus forbearing the employer of the said Malliga from proceeding in the matter of verification of her community certificate any longer. The main prayer in the writ petition was that a mandamus must be issued to the employer to confirm her service on the basis of the report sent by the Revenue Authorities that she belongs to Konda Reddy Community. The learned appellate Judge cannot legally reject this document also, which he had done in this case. Ex.A3 is the copy of the first page of the secondary school leaving certificate book of the plaintiff and it is dated 06.03.1978. In that certificate book the petitioner's community is shown as Scheduled Tribe. Ex.A4 is the copy of the transfer certificate issued by the Government College at Ooty relating to the plaintiff and it

shows that he belongs to Konda Reddy Community. Ex.A5 is the certified copy of the first page of the secondary school leaving certificate relating to Ravichandran (the plaintiff had given evidence that Ravichandran is his brother). It shows the religion of Ravichandran as Hindu-Konda Reddies (Scheduled Tribe). There is no reason as to why these documents shall not be taken into account. Except making a passing reference to these documents, the learned appellate Judge had not given any finding as to whether these documents have any evidentiary value or not. There is total absence of discussion on these documents.

6. Ex.A25 is the judgment dated 13.09.1984 in W.P.No.2211/1983 passed by a Division Bench of this court consisting of the Hon'ble Chief Justice and another learned Judge. The present plaintiff is the writ petitioner therein. The third defendant in the present suit is the first respondent therein. The fourth defendant herein is the sixth respondent therein. The petitioner was challenging the order dated 22.01.1983 passed by the first respondent therein rejecting the petitioner's request to issue a community certificate, which was wanted by his employer. The Bench noted that as many as 28 documents were produced before the Revenue Authorities by the petitioner; there is total non-application of mind to the same and therefore the order impugned therein is vitiated. Accordingly the rejection order referred to above was set aside. The Bench also permitted the petitioner therein to produce the community certificate issued by the Tahsildar before his employer and left it to their discretion to seek for verification of the same addressing the District Collector.

7. On the above contents of the order, the learned appellate Judge proceeded to state as follows:

"In the present suit also, the plaintiff had produced only documents, which he had already produced and he had not filed any fresh documents; though settlement deeds, sale deeds and mortgage deeds are exhibited showing the parties to those documents as belonging to Konda Reddy Community and though the Tahsildar had given certificate in respect of third parties showing them as persons belonging to Konda Reddy Community, yet in the absence of proof that the plaintiff is related to the parties to those documents, it is not possible to hold that the petitioner belongs to Konda Reddy Community."

This again is a shocking conclusion and finding, since there is no dispute that the plaintiff had established his relationship with the parties to almost all the documents, which he had produced. Under these circumstances, I have no doubt at all that the learned appellate Judge had not applied his mind to the relevant materials and in fact came to reject them as of no evidentiary value contrary to the evidence on record. The learned appellate Judge had referred to the judgment of the Apex Court in C.A.No.4725/1995, which in my respectful opinion, has no bearing on the issue involved in the suit. The question that arose in that judgment was whether in a petition under Article 22 6 of the Constitution of India filed for correction of the date of birth, can any interim relief be granted, which would enable the person concerned to continue beyond the year of birth on record? The Apex Court held that such an interim order shall not be granted because, if ultimately the party to the

proceeding succeeds, he would have all his remedy protected. This judgment, according to the learned appellate Judge, would disable the plaintiff from getting the relief as prayed for in the suit. I am at a loss to understand as to how it would come in the way of the plaintiff. The Apex Court in the judgment reported in 1996(2) S.L.R.Pg.868 (G.B.Nagpure Vs. State of Maharashtra) (the case related to issuance of a community certificate) held as follows:

"17. Applying the above test to the facts of the present case, we are satisfied that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "Sl.No.9" which led the Committee ultimately record a finding against the appellant. By a wrongful denial of the caste certificate, the genuine candidate, he/she will be deprived of the privileges conferred upon him/her by the Constitution. Therefore greater care must be taken before granting or rejecting any claim for caste certificate."

8. In my opinion, the civil court's jurisdiction to grant a declaratory relief that the plaintiff belongs to Konda Reddy Community does not stand ousted at all. Ex.A29 is the judgment dated 30.11.1989 in W.P.No.15300/1989 rendered by a learned Judge of this court. The petitioner was one Amirtha. She was challenging the order passed by the Revenue Authorities that she did not belong to Kattu Naicken Community. Noting that the petitioner therein had admittedly filed a suit bearing O.S.No.865/1988 on the file of the Sub-Court, Madurai for a declaration that she belongs to Kattu Naicken Community, the learned Judge refused to exercise the power under Article 226 of the Constitution of India holding that "the suit is the proper remedy". A learned Judge of this court in the judgment reported in 2000 (2) CTC Pg.425 (State of Tamil Nadu Vs. Durairaj) following an unreported judgment dated 30.03.1999 in S.A.No.370/1997 of a learned Judge of this court, held that such a suit is maintainable. I have also in my unreported judgment dated 27.09.2002 in S.A.No.1481/1999 followed the above referred to reported judgment holding that the suit is maintainable. Of course when I decided the above referred to case, the State relied upon a judgment of a Division Bench of this court reported in 2002 (3) CTC Pg.411 to contend that the suit for such a relief is barred. The Division Bench took note of the earlier judgment reported in 2000-2 -CTC Pg.425 referred to supra. At that stage it was brought to my notice by the learned counsel for the contesting party that the judgment of the Division Bench of this court referred to supra was taken on appeal before the Apex Court in the petition for Special Leave to Appeal (Civil) No.13503 to 13504/2001 and while ordering notice, the Apex Court passed an order as follows:

"Exemption allowed.

Even though a civil suit may be maintainable on the question as to whether the petitioner belongs to a particular caste or not, the said question can also be gone into in the departmental proceedings. Mr. K.K.Venugopal learned senior counsel for the petitioner states that in the inquiry which has been instituted against the petitioner, the Inquiry Officer should investigate the correctness of the allegations and give a finding. He also states that

the pendency of the civil suit should not deter the Inquiry Officer from deciding the same. We, therefore, issue notice returnable after eight weeks limited to the question as to whether the civil suit was maintainable or not, but proceed and conclude with the inquiry within two months from today."

The said proceedings were disposed of by the Apex Court by order dated 18.03.2002 stating as follows:

"Leaving the question of law open, the Special Leave Petitions are dismissed."

Having regard to the declaration made by the Hon'ble Supreme Court of India that the question of law is left open and in the context of the earlier judgment rendered by the learned Single Judges of this court, I have no hesitation to hold that the suit is maintainable. I have already referred to a Division Bench judgment of this court, which judgment is marked as an exhibit in the present proceedings, which set aside the order of the Revenue Divisional Officer, Gobichettipalayam refusing to issue the community certificate to the petitioner therein (plaintiff herein) holding that the order challenged was vitiated due to non-application of mind. There is overwhelming material on the side of the plaintiff to show that he belongs to Konda Reddy community.

9. In the light of my discussion as referred to above, I answer the questions of law framed by this court and extracted above as follows:

Question of Law (a): The judgment referred to in this question of law has no impact either in law or on facts to the case on hand and by taking that judgment into account, the decision making process of the lower appellate court stands vitiated in law and on facts.

Question of Law (b): The civil court's jurisdiction to grant the relief that the plaintiff belongs to Konda Reddy Community/Scheduled Tribe Community is not ousted.

Question of Law (c): The lower appellate court had committed a grave illegality in summarily rejecting the relevant documentary evidence filed by the plaintiff without even properly adverting to it.

Question of Law (d): Does not arise for consideration.

9. For all the reasons stated above, I set aside the judgment of the lower appellate court and restore that of the trial court. Each party to bear their costs throughout. Consequently the connected C.M.P is closed.

Vsl

To
1.The Principal District Munsif, Bhavani
2.The Subordinate Judge, Bhavani
3.The Record Keeper, VR Section, High Court, Madras

Index: Yes
Internet:Yes